IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.957 OF 2005
IN
SUIT NO.2130 OF 2004

Indian Metal & Ferro Alloys Ltd. & Anr...Plaintiff.

V/s.

Malethil Suresh Kumar & Ors. ..Defendants.

And

Sudha Suresh Kumar & Ors. ..Proposed Defendants/Rspondents

Ms.F. Sethna i/b Dunmorr Sett & Co. for Plaintiff.

Mr.L.N.Chavan for Res.No.1,2 and 3.

Ms. Anjali Mamapathi i/b K.R.Iyengar for defendant No. 1 to 4, 6 to 8.

CORAM: A.M.KHANWILKAR,J

DATE : AUGUST 17, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleading.

2. This application is essentially for two reliefs. First relief is to implead respondent No.1 to 5 named in chamber summons as defendants in the pending suit. The second relief is to permit amendment in terms of Schedule (1), which is stated to be necessitated on account of correct information

now made available to the plaintiff in relation to the defendant No.7,9 and 10 respectively.

3. This application is resisted by respondent No.1 to 5. In so far as impleading respondent No.1 to 3 is concerned, case of the plaintiff is that in the affidavit filed by the defendant No.1 in Appeal No.640, 645/2004 before the Division Bench of this court in terms of order dated 14th October, 2004, defendant No.1 has clearly accepted the position that property mentioned at Sr.No.3 of the chart regarding details of the immovable properties, it is seen that it was purchased by him on 28th June, 1984. However, now the same is transferred in the name of respondent No.2 and 3. It is further stated that divorce decree has been passed between the defendant No.1 and his wife Ms.Sudha Suresh Kumar on 31st October, 2002. According to the plaintiff, transfer effected in favour of the respondent No.2 and 3 by the defendant No.1 is obviously a financial arrangement arrived at between them, so as to defeat the claim of the plaintiff.

4. To my mind, the case made out in the plaint against the defendant No.1 even if accepted as it is, would indicate that the defendant has received monies

between 1997 and 2003 for the benefit of the plaintiffs and which amount has been embezzled and syphoned by the defendant No.1. Even if the allegations in the plaint against the defendant is accepted as it is, I see no substance in permitting impleadment of respondent No.2 and 3 as party defendants to the suit, merely on the assertion that the said flat at Sr.no.3 of the chart is now transferred in their favour, which was originally purchased by the defendant No.1. This is so because, material on record clearly establishes that the said flat was purchased by defendant No.1 on 20th June, 1984 and has been transferred in favour of the respondent No.2 and 3 recently. The reason for which the said flat was transferred in favour of the respondent No.2 and 3 by the defendant No.1 will be inapposite for the simple reason that the said property was purchased by the defendant No.1 as back as in 1984, which is much prior to 1997 wherefrom the defendant No.1 is alleged to have embezzled and siphoned away monies of the plaintiffs. In other words, there is no causal connection between acquisition of the flat by defendant No.1 in 1984 and the alleged act of embezzlment in 1997 onwards. In my opinion, therefore, Respondent Nos.1 to 3 can neither be said to be necessary nor proper party to

the suit filed by the plaintiffs. Merely because they happened to be wife and children of defendant No.1, that by itself cannot be the basis to implead them as defendant in the suit. For, the only allegation against the defendant No.1 is of misappropriation and embezzlement of monies of the plaintiffs between 1997 and 2003.

5. That takes me to the prayer for impleading the respondent Nos.4 and 5 as party defendants to the suit. As mentioned earlier, the case of the plaintiffs is that the amounts received by the defendant No.1 between 1997 to 2003 have been embezzled and syphoned away by the defendant No.1 in firms and organisation created by the defendant No.1 or from where the defendant No.1 was operating his activities. It is not in dispute that defendant No.1 is associated with respondent No.4 and 5. It is stated that defendant No.1 is the director in respondent No.4 company and the said company has been formed only to subserve illegal activities of the defendant No.1. Similarly, defendant No.1 is associated with respondent No.5 being sole trustee of respondent No.5 trust. It is the case of the plaintiff that the amounts syphoned away by the defendant No.1 during 1997-2003 have been transferred

and operated with the connivance of respondent No.4 and 5. In my opinion, having regard to the case, as made out, the correctness of which will have to be tested at trial. However, the presence of respondent No.4 and 5 will be necessary for full, complete and effectual adjudication of all the issues to be decided in the pending suit between the parties. If the allegations against the defendant No.1 of having carried out illegal activities, using respondent No.4 and 5 as the cover, if accepted, and proved, appropriate orders will have to be passed to do substantial justice between the parties. Viewed in this perspective, presence of respondent No.4 and 5 will be necessary in the pending suit.

6. To get over this position, counsel for the respondent No.5 contends that respondent No.5 is a public trust. No proceeding can be instituted against the said trust without consent of the Charity Commissioner. To make good this argument, reliance is placed on Section 51 of the Bombay Public Trust Act. This submission is completely ill-advised. Section 51 of the said Act will come into play only where a person having interest in any public trust intends to file a suit of the nature specified in the Section 51 of the Act against the trust. In the

first place, the plaintiffs who intend to file such suit have no interest in the public trust. There is nothing on record, nor brought to my notice by the counsel for respondent No.5, that the the plaintiffs have any interest in respondent No.5 trust. If it is so, section 51 of the Act is of no avail to resist impleadment of respondent No.5.

7. That takes me to the second relief in this chamber summons for amendments in terms of Schedule-I, so as to bring on record correct names of defendant Nos. 7, 9 and 10. It is the case of the plaintiffs that names of the defendants No.7,9 and 10 as mentioned in the plaint are not correct and that mistake has occured due to inadvertence. However, now the correct information is made available to the plaintiffs. In as much as, the correct names against whom relief ought to be prayed by the plaintiff should be Thushara securities (I) Ltd., Melstar Business Creators Pvt.Ltd. and Melstar Market Creator Pvt.Ltd.. During the course of the argument, however, counsel for the plaintiffs on instructions states that request for substituting names of defendant No.7 as mentioned in Schedule I is not pressed by the plaintiffs, in view of subsequent instructions and information received. In other

words, prayer clause (b) is pressed only in respect of the amendment in terms of clauses (b) and (c) of Schedule I, which pertains to defendant No.9 and 10 respectively. In view of the case made out by the plaintiffs in the affidavit in support of the application which is substantiated from the record, in my opinion, in the interest of justice, plaintiff be permitted to amend the plaint in terms of clause (b) and (c) in Schedule-I, substituting names of the defendant Nos. 9 and 10 respectively.

8. Accordingly, this chamber summons partly succeeds, in so far as prayer clause (a) and (b), on the above terms. In other words, plaintiffs are permitted to implead respondent No.4 and 5, and to carry out amendments to substitute names of defendant Nos. 9 and 10, as mentioned in clauses (b) and (c) of the Schedule-I to the chamber summons.

9. Amendment to be carried out within four weeks. No order as to costs.

10. Plaintiffs are also permitted to carry out amendment in respect of the clerical error occurring in the cause title relating to description of respondent No.4 and 5 as respondent No.1, instead it

should read as defendant No.1. That amendment to be carried out in the course of the day.